

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

UNION VOLUNTEER EMERGENCY SQUAD¹

Employer

and

Case 3-RC-11507

**INTERNATIONAL ASSOCIATION OF EMTS AND
PARAMEDICS, SEIU/NAGE, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that Union Volunteer Emergency Squad, Inc. (herein called the Employer) is a New York State not-for-profit corporation with its principal place of business located at 8 South Avenue B, Endwell, New York, where it is engaged in the provision of emergency medical services to residents of the Town of Union, New York. During the past

¹ The name of the Employer is amended herein to reflect its correct legal name.

twelve months, a representative period, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Endwell, New York facility goods and materials valued in excess of \$50,000 directly from points located outside the State of New York.

Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated that there was no collective-bargaining agreement that would bar a representation election with respect to the petitioned-for unit herein.

4. The parties stipulated that an appropriate unit includes all full-time EMT critical care employees, EMT basic employees and EMT paramedic employees, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act, and all other employees.²

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner has petitioned for a unit of all full-time and regular part-time EMT critical care employees, EMT basic employees and EMT paramedic employees and per diem EMT critical care employees, EMT basic employees and EMT paramedic employees that worked an average of four hours per week over the 13 week quarter preceding the filing of the petition.³

At issue is whether the Petitioner is a labor organization within the meaning of Section

² While the Petitioner has agreed to go to an election if this is found to be the appropriate unit, it did not take any position with respect to any other unit that might be found appropriate.

³ There are approximately seventeen full-time EMTs including the five disputed individuals, seven part-time employees, and five or six per diem employees. Two per diem employees meet the eligibility requirements stated by the Petitioner for inclusion in the bargaining unit.

2(5) of the Act; whether five individuals, Stanley Mohr, Dean Van Hart, Jennifer Jacobs, Bryan Davidson and Marshall Cutting are supervisors under Section 2(11) of the Act; and whether part-time and eligible per diem EMT critical care employees, EMT basic employees, and EMT paramedic employees should be included in the bargaining unit. It is the Employer's position that the Petitioner is not a labor organization, that the named individuals are supervisors, and that part-time and per diem employees should be excluded from the unit.

The Petitioner, International Association of EMTs and Paramedics is an organization affiliated with SEIU, National Association of Government Employees (NAGE), and the AFL-CIO. The Petitioner is an organization that admits to membership any employee and exists in whole or part for the purpose of dealing with employers over conditions of work or wages, hours and other working conditions. Members are permitted to attend meetings of the Petitioner, and the Petitioner holds internal union elections in which the members vote. The Petitioner argues the merits of work place grievances on behalf of employees and members with the employers who employ them and adjusts those grievances with the employers. If the Petitioner is certified as the representative of the Employer's employees, it is Petitioner's intent to negotiate a collective-bargaining agreement. If the Petitioner is certified as the collective-bargaining representative of the employees herein, the bargaining unit employees will be formed into their own local chapter of the Petitioner with their own executive board and their own local number.

The Employer was incorporated in 1972 and began operations on June 1, 1973. The Employer was staffed solely by volunteers until late 1992 or early 1993, when it retained a director of operations to augment the volunteers with paid staff. There are currently 38 full-time, part-time and per diem paid staff and approximately the same number of volunteers.⁴ Prior to

⁴ The Petitioner is not petitioning for volunteers to be included in the unit.

1993, the Employer operated solely on donations. At the time the Employer hired paid staff, it began to bill insurance companies for patient services through a third-party billing system to augment revenues. In January 2003, the Employer solicited for, and was awarded, a special tax district. Current revenues come from third party billing, donations and through its contract with the tax district.

The Employer operates three facilities within the Town of Union; Riverside Drive in Johnson City; 8 South Avenue B in Endwell (the central station) and 323 Maple Street in West Endicott. The Employer has a contract with the town of Union as the primary provider of emergency services within the Town's district.⁵ The Employer handles emergency 911 calls for the town of Union and provides mutual aid outside the Town of Union.⁶ In January 2004, the Employer began to perform non-emergency transports to nursing homes, hospitals and similar institutions.

Glenn Roberts is the Employer's executive director and is the paid primary contact or liaison to the agency for all day-to-day operations such as human resources, staffing, operational control and management.⁷ Has held this position for approximately one year. Roberts is a salaried employee. Roberts is also an EMT paramedic and is certified in CPR. He occasionally participates in emergency calls.

John Hussar is the director of administrative services.⁸ Hussar facilitates special projects for the Employer and manages several coordinators. He is responsible for the activities within

⁵ The contract gives the Employer the primary first call for services within the Town of Union. The Town of Union does not pay the Employer for services rendered in connection with this contract.

⁶ According to the record, agencies sign up to participate in the mutual aid plan. If there is no on-duty crew available by the primary provider for an EMS call, emergency services polls to determine the nearest agency with a crew available to respond. Roberts testified that the Employer may render mutual aid anywhere in the Broome County mutual aid plan, some of which falls outside of the Employer's geographic area of the town of Union. The Employer provides transport services both throughout and outside the State of New York.

⁷ There is no dispute that Roberts is a Section 2(11) supervisor.

⁸ There is no dispute that Hussar is a Section 2(11) supervisor.

each of the divisions he oversees. He is also an EMT basic. He spends approximately ten percent of his time participating in emergency calls.

All paid employees must be certified as emergency medical technicians (EMTs) at either the basic, intermediate, critical care or paramedic level.⁹ All EMTs must pass practical and didactic examinations in order to receive their New York State certifications.

All full-time EMTs can participate in the Employer's health, dental and life insurance plans, which are fully funded by the Employer. Full-time employees receive paid time off. Part-time and per diem employees receive no health, dental, or life insurance, and do not get paid time off. Full-time employees receive \$200 per year toward the cost of EMS-oriented continuing medical education (CME). Part-time and per diem employees receive a prorated amount toward CME based on the number of hours they work over the course of the year, up to \$200. All employees can participate in the retirement program but only full-time employees receive a matching benefit from the Employer. All full-time, part-time and per diem employees receive free uniforms¹⁰ and a boot allowance up to \$80, prorated by the amount of hours they work. Any employee with 1000 hours of duty time per year can participate in the 403(b) program.¹¹

Pay periods are bi-weekly. Full-time employees work regularly scheduled shifts of 36 hours one week during the pay period and 48 hours the other week. They are primarily employed by the Employer. Some part-time employees are employed primarily by other employers. Per diem employees may be employed by other employers as well.

⁹ Basic is the lowest level of certification and paramedic is the highest. There are currently no intermediate level EMTs on staff.

¹⁰ Full-time employees get four sets of uniforms; part-time and per diem employees each receive two sets of uniforms.

¹¹ No part-time or per diem employees are eligible to participate based on the hourly threshold.

The Employer staffs two vehicles 24 hours per day, seven days per week with two crews.¹² In addition to regularly scheduled employees, volunteers can sign up to work on either crew, or to work at the central station. The Employer sometimes operates a third or fourth crew during the day out of the central station depending on the number of volunteers on duty on any given day.

Part-time employees work a regularly scheduled twelve-hour shift, i.e., a particular day or days each week.¹³ They are not permitted to work more than 36 hours in a week. Per diem employees do not work a regularly scheduled day and/or shift. They normally request to work or are contacted to work by the Employer to fill its schedule. The expectation is that per diems will work a minimum of 12 hours per month, depending on the operating needs of the Employer. The Employer first schedules full-time and part-time employees for their regularly scheduled shifts. If the Employer needs additional people, it first contacts volunteers to fill the shifts and then contacts either part-time or per diem employees.¹⁴ Roberts is the person primarily responsible for scheduling employees.

Full-time employees work with both part-time and per diem employees. All individuals on an ambulance call have the same level of responsibility when on duty, and the parties stipulated that all perform the same job duties and job functions as other employees at their level of certification. The only difference is the number of hours worked each pay period. Full-time, part-time and per diem employees act as crew chiefs.¹⁵ Full-time, part-time and per diem

¹² The record is unclear as to how many individuals comprise a crew but it appears from some testimony that there are normally two individuals on a crew.

¹³ Part-timers could conceivably work a shorter shift if they request to do so.

¹⁴ The Employer has no preference among part-time and per diem employees when contacting individuals to fill shifts.

¹⁵ The crew chief is the team member deemed to be in charge of the call. The crew chief is responsible for the care of the patient and is determined by the needs of the patient at the time of arrival on the scene. No party is contending that crew chiefs are Section 2(11) supervisors.

employees do not receive evaluations in connection with their employment. It appears that pay increases are granted on an annual basis, although it is unclear whether all individuals receive a pay increase.¹⁶ All paid employees receive a password to the agency website and can access the Employer's compensation manual.

Stanley Joseph Mohr is an EMT paramedic and has functioned as OSHA coordinator since January 2004. He receives an hourly stipend of 50 cents in addition to his regular hourly rate of \$14.10 to perform the additional duties and responsibilities of OSHA coordinator. Mohr testified that he spends 100 percent of his time as an EMT paramedic and that he performs his OSHA responsibilities when time allows.¹⁷ Mohr sometimes performs the duties of preceptor as an EMT paramedic, which consist of mentoring and training less experienced EMTs.

Mohr reports to Hussar in his capacity as OSHA coordinator, and to Roberts in his capacity as both OSHA coordinator and EMT paramedic.¹⁸ The position of OSHA coordinator can be filled by a paid employee or by a volunteer. As part of the job description for OSHA coordinator, Mohr is responsible for ensuring that the ambulances, the three stations manned by the Employer, and the personnel are in compliance with OSHA regulations.¹⁹ Mohr met with either Hussar or Roberts to discuss the duties of the position.²⁰ Neither Hussar nor Roberts ever

¹⁶ All pay increases are based on a percentage and are at the discretion of the Employer's Board of Directors. All employees do not receive the same percentage increase. Roberts testified that he makes the case before the Board for certain employees to be granted certain pay increases. Roberts has had informal recommendations regarding pay increases from Hussar.

¹⁷ The record does not establish whether Mohr performs his OSHA responsibilities outside of his regular working hours or during working time when he is not out on a call.

¹⁸ The Employer presented two versions of its organizational chart; one that was in place prior to September 2004 and one that the Employer is in the process of implementing. It appears from Roberts' testimony that neither organizational chart accurately depicts the reporting structure as of the time of the hearing. Accordingly, I will rely on the testimony of the witnesses with respect to the Employer's organizational structure.

¹⁹ Mohr received a job description via email for the OSHA coordinator position, although it is unclear as to whether it was the same job description submitted by the Employer in the instant hearing.

²⁰ Mohr did not clarify whether he met with Hussar or Roberts.

advised Mohr that he had the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employees.

Mohr's job description states that he is responsible for developing and implementing the Employer's OSHA standards and policies to ensure that the Employer has policies and procedures in place for compliance with OSHA standards and to ensure that the Employer's documentation meets OSHA requirements. Mohr testified that he has never developed or implemented policies, although he "tweaked" the forms left by his predecessor and submitted them to Hussar for approval.²¹ Mohr developed an incident report to be used by individuals to report an accident or health issue by modifying another agency's form. While Roberts testified that Mohr authored an exposure plan. Mohr denied that he had done so.²² Mohr is responsible for posting OSHA posters around the Employer's facilities for employee reference, and ensures that OSHA information is available to employees.²³

Mohr has access to, and knowledge of, the health records of the Employer's employees and volunteers in order to ensure that they are in compliance with New York State Department of Health requirements regarding physical exams and inoculations.²⁴ Roberts, Carrie Kirgan, Robert's administrative assistant, and Mohr have access to these health records. Mohr has no access to employee personnel files, nor does he review patient care records (PCRs). Mohr keeps track of each employee's dates of expiration of the various health requirements, such as PPD testing and physical examinations, on a grid form created by his predecessor.

²¹ To Mohr's knowledge, the forms are currently with Roberts for approval based on an e-mail from Hussar.

²² The exposure plan appears to be a needle stick policy.

²³ The OSHA poster is required to be posted at every place of employment. It contains basic standards and references an OSHA book that should be available to employees.

²⁴ The Employer does not claim that Mohr is a confidential employee because of his access to employee medical records.

According to Roberts, Mohr is also the safety officer, although Mohr denied that he holds such a title. Roberts testified that Mohr's duties are to identify and resolve potential safety issues and to handle any incidents that would be deemed a threat or a safety situation. Mohr has never resolved a safety issue or handled a safety incident. All employees, including Mohr, are responsible for reporting unsafe situations or unsafe working conditions. Safety violations reported by any employee can result in discipline of the offending employee.

Roberts testified that Mohr has the authority to suspend employees if there is a safety issue and can effectively recommend termination.²⁵ Mohr has never recommended the discipline of an employee in his capacity as OSHA coordinator, nor has he ever reprimanded an individual in his capacity as OSHA coordinator.²⁶ Although Roberts testified that Mohr currently directs the work of employee Brian Hutchinson, Roberts admitted on cross-examination that Hutchinson is a volunteer.²⁷ Mohr testified that he is unaware that he is "in charge" of Hutchinson, who does not report to Mohr on a daily or monthly basis.²⁸ Mohr does not have the ability to direct Hutchinson's work. Mohr has never counseled Hutchinson regarding his work performance, and has never recommended discipline for him. Mohr cannot grant time off to employees.

According to Roberts, Mohr recommended discipline for several individuals based on their noncompliance with physical requirements.²⁹ Hussar testified that, at a meeting on April 14, 2004, Mohr provided Hussar with a list of individuals who were not in compliance with

²⁵ Only the Board of Directors can suspend or terminate an employee. Roberts testified that this has occurred on three occasions since his tenure as executive director. In two instances, Roberts recommended termination. The termination of the third employee was recommended to Roberts by Jeff Crutcher, a former employee, who in turn, recommended termination to the Board. The third employee was suspended for two weeks.

²⁶ Mohr stated that he has addressed issues with crew members. The record does not elaborate as to what issues, or the manner in which Mohr addresses them.

²⁷ Hutchinson is responsible for ensuring that the Employer's material safety data sheets (MSDS), which identify risks or components associated with chemicals or agents that may be in the Employer's facility, are continuously in stock. MSDS sheets are required as part of compliance with OSHA regulations.

²⁸ It is unclear from the record whether Hutchinson reports to Mohr at all.

²⁹ None of the employees was disciplined as they all brought themselves into compliance.

health requirements and recommended that these individuals be given until May 1 to gain compliance with health requirements or they would not be permitted to perform patient care. All or substantially all of the individuals on the list were volunteers. Hussar stated that he followed Mohr's recommendation. If individual health records do not meet OSHA requirements, Mohr provides Roberts with a list of which employees are out of compliance, and with drafts of notices to employees informing them of their need to meet OSHA requirements; he does not send notices directly to employees.³⁰ Mohr does not interview job applicants. Mohr has never recommended that an employee work overtime.

Mohr attends meetings with Roberts and Hussar to discuss OSHA and safety-related issues. Mohr has never addressed a safety grievance and no individual has approached him with a safety grievance, or with any concerns with respect to OSHA or safety. Mohr stated that if an individual approached him with an OSHA problem, it would be his job to address the issue or to bring the issue to someone above him if he could not handle it.

Roberts testified that Mohr is responsible for OSHA training, which requires annual training in blood-borne pathogens and certain OSHA requirements but, according to Mohr, he has never conducted or facilitated OSHA training. In May 2004, Mohr posted a notice about mass "PPD" training in order to get everyone up to date.³¹ Roberts arranged for the PPD trainer. Mohr attends meetings with Roberts and Hussar to discuss, inter alia, specific employees and potential OSHA violations.³²

³⁰ Mohr stated that individuals whose health records are not current do continue to continue to take emergency calls, but he is unsure as to how long they are permitted to do so.

³¹ Mohr could not recall what PPD stood for although he did state that it relates to tuberculosis testing.

³² There is no evidence in the record as to what else is discussed during these meetings.

Dean Van Hart currently holds the position of fleet manager and has held this position for four to five years.³³ Van Hart's primary title is EMT paramedic and he spends approximately 90 percent of his time performing paramedic duties. Van Hart works full-time and earns a base salary of \$17.85 per hour plus a stipend of \$1.00 per hour in connection with his responsibilities as fleet manager. He currently reports to Roberts. His job title states that, as part of his duties, he establishes, implements and supervises a support team of coordinators. Van Hart does not currently supervise or direct the work of any employees or volunteers. Van Hart testified that he has never been advised that he has the ability to recommend discipline in his role as fleet manager.³⁴ Van Hart has never attended a supervisor meeting in his role as fleet manager.

Van Hart's primary duty as fleet manager is to oversee vehicle maintenance, which consists of ensuring that the ambulances are in working order, that the oil is changed and that monthly preventative maintenance is performed. Ambulances are rotated each Monday to ensure that the mileage is spread among the vehicles. Van Hart checks one or two of the vehicles at whichever of the Employer's three facilities he is located at the time to determine whether the oil level is sufficient and to check whether the vehicle is due for an oil change. Van Hart creates a schedule for vehicle maintenance based on mileage and usage and rotates vehicles through the service shop for maintenance. Van Hart does not perform maintenance on the vehicles on their own initiative.³⁵ Drivers, on their own initiative, have the authority to take an unsafe ambulance out of service.

Employees are required to check the fuel level, the oil, the tires and the lights; to inspect the vehicles for damage at the start of each shift; and to clean out their vehicles and wash and

³³ The Employer presented testimony that Van Hart was also the operations manager from August 2003 through September 2004, as well as testimony about his job duties in that capacity. He resigned from that position.

³⁴ Van Hart stated that he was told that he had that authority when he was director of operations.

³⁵ Maintenance is performed by a private company called Schultz Vestal Service.

maintain them. Van Hart does not review the pre-shift mechanical check sheets and is not aware that he has any authority to discipline an employee for failing to fill out the sheets.

The Employer implemented a five-year plan that called for the replacement of one ambulance each year.³⁶ Roberts testified that there was a vehicle purchase committee consisting of Van Hart and one Board member. Van Hart assisted in the implementation of a service area map system for the Employer because of the paucity of existing maps.

Van Hart is not required to work on call and has never reported in off-shift as fleet manager. According to Van Hart, it is his understanding that he is not to report in off-shift unless it is for an ambulance call. Roberts stated that Van Hart develops vehicle policies regarding rotation schedules, maintenance equipment and repairs of vehicles. The record is clear that all policies are reviewed and signed by Roberts on behalf of the Board of Directors prior to implementation. Van Hart testified that he did not write or implement most of the policies; rather, he was provided the policies for the fleet manager position by the prior director of operations.

Van Hart has never had the opportunity to interview applicants as fleet manager. Although Roberts testified generally that Van Hart resolves situations that arise with respect to the vehicles, he was unable to provide any specific examples of the types of situations that Van Hart would resolve, or any instances where Van Hart had resolved a situation in his role as fleet manager.

Jennifer Jacobs is the QA/QI (quality assurance/quality improvement) coordinator and has held this position since approximately August 2003. She is also an EMT paramedic and has been employed by the Employer since August 15, 2001. Jacobs testified that she performs QA

³⁶ The record is silent as to when this plan was implemented.

duties once a month and spends approximately 90 percent of her time as a paramedic. Jacobs does not have an office. Jacobs earns \$13.75 per hour plus an additional 75 cents as a stipend for performing QA/QI responsibilities. She currently reports to Roberts.³⁷ Jacobs testified that when she became QA/QI coordinator, she met with Roberts to review the roles and responsibilities associated with the position. Roberts never advised her that she had the ability to recommend hiring, firing, transferring, suspending, promoting, discharging, assigning work, rewarding or disciplining employees. Hussar provided Jacobs with a copy of her job description but she was uncertain as to whether it was the same job description placed into evidence by the Employer, which states that the position can be filled by either a paid or volunteer individual.

As part of Jacob's job duties, she facilitates and manages the QA/QI committee. As part of quality assurance, the committee reviews PCRs to insure that the Employer is following the standards, protocols and policies of New York State and/or the local regional committee. For purposes of quality improvement, the committee examines whether remediation or follow-up is required in certain situations. Recommendations for remediation are made to the medical director. QA/QI is not disciplinary; its purpose is to foster improvement in patient care.

The committee consists of Jacobs; Stacey Kapcho, Advanced Life Support (ALS) supervisor,³⁸ narcotics officer and privacy officer; Stephanie Bender EMT critical care; a nurse from outside the agency; one EMT paramedic; and one EMT critical care individual. The committee is staffed predominantly by paid individuals. Participation in the committee is voluntary with the exception of Kapcho, who is required to be on the committee because of her role as narcotics officer. Roberts is not on the committee but Jacobs reports the committee's

³⁷ Jacobs testified that she reported to Hussar until approximately three weeks prior to the hearing.

³⁸ The parties stipulated that Kapcho is a Section 2(11) supervisor.

findings to him.³⁹ The Employer's medical director has the ultimate authority to place an individual on QA/QI review, the remedial program.

Most of the members were already on the committee at the time Jacobs became the QA/QI coordinator. Jacobs recommended and contacted a nurse to participate on the QA/QI committee.⁴⁰ The committee reviews all PCRs from people on 100 percent review,⁴¹ and all PCRs involving narcotics. Broome County selects PCRs identified as critical and unstable and sends a report to Gus Branish, a participant on the committee,⁴² who then prints out the PCRs selected for review.⁴³ Jacobs receives a sheet listing the PCRs to be reviewed and distributes them randomly by their order on the list to committee members, who each review approximately ten to fifteen PCRs each month. All PCRs involving narcotics are reviewed by Kapcho because she is the Employer's narcotics officer. Committee members Gus Branish⁴⁴ and Stephanie Bender, a paid employee, have also assigned PCRs to committee members.

Roberts testified that Jacobs has the authority to discipline employees up to and including termination for violating QA/QI, although she has never exercised that authority. Jeff Crutcher, Jacob's predecessor as QA/QI coordinator, recommended disciplinary action against employee Phil Buttacovoli because he was unable to sustain patient care performance at the level recommended by the QA/QI committee. Crutcher was also the ALS supervisor at the time of

³⁹ Roberts sits on the committee if Kapcho is not available.

⁴⁰ According to Hussar, New York State DOH mandates the Employer to have a registered nurse, physician's assistant or active physician on the roll during evaluations. The nurse is not employed by the Employer. She participates on the committee as a volunteer.

⁴¹ 100 percent review pertains to individuals selected for remediation.

⁴² Broome County has access to the PCRs through the computer system.

⁴³ Criticals and unstables are considered the most serious emergency calls. PCRs are evaluated under a "CUP" scale to determine whether the call falls under this category. CUP was not defined in the record.

⁴⁴ Branish is not a paid employee. The record is silent as to whether he is a volunteer for the Employer, or merely volunteers to sit on the committee.

Buttacovoli's termination. Roberts was uncertain whether Crutcher recommended Buttacovoli's termination in his role as QA/QI coordinator, or as ALS supervisor.

The committee keeps records in a single notebook kept in a filing cabinet in the PCR room. All members of the committee have access to the notebook. Kapcho, Roberts and Jacobs have access to all PCRs.⁴⁵ Committee members have access to the PCRs to which they are assigned. The Employer develops remediation programs for targeted employees based on Jacob's recommendations from the QA/QI committee. Two EMT paramedics, Tom LaMont and Kevin Cron, are currently on suspension.⁴⁶ Jacobs reviewed Cron's PCR at Roberts' request and provided her comments to him, but made no recommendation regarding remediation or discipline, and was unaware that Cron was put on remediation until she was advised by Roberts or Kapcho. Jacobs is not involved in developing remediation plans for employees or volunteers.

Committee members examine PCRs to determine whether the documentation follows the algorithm.⁴⁷ During committee meetings, committee members discuss their findings as a group.⁴⁸ The committee member who reviews the PCR is responsible for addressing any problems found therein directly with the provider.⁴⁹ Serious issues such as patient harm or failure to follow a protocol are taken to Kapcho, who reports to the medical director. Jacobs has never reported directly to the medical director but, instead, reports to Kapcho. The seriousness

⁴⁵ The Employer is not claiming that Jacobs is a confidential employee based on her access to all PCRs.

⁴⁶ Jacobs did not review LaMont's PCR in her capacity as QA/QI coordinator. She was on an emergency call with LaMont and did review the documentation in her role as paramedic. Jacobs testified that she was involved in a meeting about LaMont wherein she stated that she did not believe that he did anything wrong on the call. It is unclear from the record whether she attended this meeting in her role as paramedic or QA/QI coordinator. If she attended in her role as QA/QI coordinator, Roberts clearly did not follow her recommendation.

⁴⁷ The record is silent as to the definition of an algorithm, but it appears to be some type of formula for the protocols that must be followed on each emergency call.

⁴⁸ As an example, Jacobs testified that a committee member might mention that a provider (the EMT who treated the patient) needed to check their spelling. Jacobs would agree and the committee person would approach the provider and advise them of the problem.

⁴⁹ The provider is the individual who treated the patient.

of the issue is determined by the committee person performing the review of the PCR. All members of the QA/QI committee are bound by Federal HIPPA regulations with respect to any reports they review.

During her tenure as QA/QI coordinator, Jacobs has met with both Roberts and Hussar about various QA/QI issues. QA/QI review has not been taken into account for purposes of employee wage increases. Jacobs has access to disciplinary records only to the extent that the discipline was a result of the QA/QI committee recommendation. She has no access to other disciplinary action, employee personnel files, or to training records.

Jacobs does not seek approval from Roberts to schedule the committee meetings, which are to be scheduled monthly.⁵⁰ Committee members are sometimes required to work overtime in order to attend the meetings. Jacobs has never directed a committee member to work overtime, and has never asked Roberts to authorize overtime for an individual to attend a committee meeting.

Marshall Cutting is the driver training coordinator, and an EMT basic. He has been a full-time employee since July 2004 and he earns \$9.23 per hour. He receives no stipend for performing driver trainer coordinator duties. Approximately 95 percent of his time is spent performing his paramedic duties. Cutter performed the duties of driver trainer coordinator as a volunteer from June 2003 until July 2004. Cutting currently reports to Hussar. Cutting's primary duty as driver trainer coordinator is to administer the driving training program. Cutting establishes and maintains a driver training program for new drivers coming into the agency. All compensated field providers are drivers and there are approximately two dozen volunteers that

⁵⁰ The record is unclear as to whether the meetings are, in fact, held monthly.

are drivers as well.⁵¹ Employees who are unable to fulfill their requirements as drivers are subject to suspension.

Cutting has never participated in any meeting in a supervisory capacity, and has never been advised that he has the authority to suspend, promote, assign work, reward employees, discipline or terminate employees. Cutting has never recommended that an employee be disciplined, suspended or terminated. Cutting directs employees to participate in training and evaluates their driving abilities. Cutting relied on the procedures set out by his predecessor when he assumed the duties. Cutting did not implement any policies, although he did create a one-page critique form for driver trainers to ensure that all driver trainees are evaluated uniformly.

No employee has been disciplined for refusing to attend training. Cutting did draft an e-mail message on one occasion advising a volunteer that she would be removed from training if she did not complete her training.⁵² Hussar is unaware of similar e-mails that were sent to paid employees. Hussar testified that he, and other employees, received e-mails from Cutting advising them that their driving privileges were subject to suspension if they failed to complete their Emergency Vehicle Operation Course (EVOC) training.⁵³ According to Hussar, Cutting established the minimum training standard for EVOC, which was mandated by the Board of Directors, and Cutting scheduled EVOC training at Hussar's directive. The October deadline to complete EVOC training was determined jointly by Hussar and Cutting.

Employees other than Cutting also train drivers.⁵⁴ Roberts testified that Cutting develops the policies and procedures governing driver trainers and determines who is qualified to act as a

⁵¹ Drivers with no EMT certification are called associate drivers. Currently, all associate drivers are volunteers. Associate drivers are not included in the petitioned-for unit.

⁵² Driver training is optional for volunteers.

⁵³ The email submitted by the Employer was the final version after it was reviewed and revised by both Hussar and Roberts. Hussar testified that the letter was not discipline but was a "reminder".

⁵⁴ Driver trainers can be either full-time or part-time employees, or volunteers. There is no extra compensation provided to driver trainers. Cutting evaluates driver trainees as a driver trainer.

driver trainer. According to Cutting, however, he followed the existing policy stating that drivers with a minimum of one year of experience are eligible to become driver trainers. If individuals with the requisite experience request to become driver trainers, Cutting recommends to Roberts that the individuals be permitted to do so.

Roberts schedules driver trainees to drive with driver trainers. Driver trainers can recommend whether trainees be cleared to drive by filling out the critique form.⁵⁵ Cutting examines the critique forms filled out by the driver trainers, signs off on them to indicate that they were filled out completely, and files the forms.⁵⁶ If there is a blatant problem with a driver trainee, Cutting reports the problem to Hussar or Roberts.⁵⁷ Cutting developed a packet that employees must fill out before they are qualified as driver trainees and examines their New York State Department of Motor Vehicle (DMV) records. The standards for acceptable DMV records are dictated by the Employer's insurance company. These policies and procedures were in place when Cutting assumed the position of driver trainer coordinator. Cutting advises Roberts as to whether individuals are qualified to train as drivers, and the individuals report back to Cutting after they have completed the driver training process. Cutting then advises Roberts that the individual has completed the requirements to be a driver and Roberts signs off on that individual as a driver.

Bryan Davidson is the supply team coordinator and has held this position for three to four years. He is an EMT paramedic. He earns \$14.57 an hour and receives no additional pay in

⁵⁵ Driver trainers evaluate such skills as speed, control of vehicle, stops, starts, and braking on the critique form. The two ratings given on the form are "need improvement" or "competent".

⁵⁶ Cutting testified that 90 percent of the comments on critique forms pertain to an inability to back the ambulance into the garage. Cutting spoke to Roberts about it, who stated that backing problems can be overlooked because the skill will develop with time. The remaining comments normally relate to excessive gas pedal or braking.

⁵⁷ Cutting testified about one incident where a driver trainer reported that the trainee had no control over the vehicle. According to Cutting, he reported the incident to Hussar. Cutting is unaware of the action, if any, taken with respect to the driver trainee involved.

connection with his supply team duties. Davidson spends approximately 95 percent of his work time performing his paramedic duties. Davidson currently reports to Roberts. Davidson has never seen a copy of the job description for supply team coordinator prior to the hearing, nor has he ever met with Hussar or Roberts regarding the duties of supply team coordinator. Davidson has never been advised that he has the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign or discipline employees. Roberts advised Davidson that he can reward volunteers as part of the On Spot Reward Program, and Davidson awarded a t-shirt to a volunteer on one occasion.⁵⁸

Davidson is responsible for making recommendations on purchases of equipment, repairing equipment and maintaining the medical supply stock. Davidson has no authority to sign purchase orders. He is responsible for stocking ambulances, although the crews are also responsible for maintaining supplies in the ambulances.⁵⁹ The crews are responsible for restocking their ambulances after each call. There is a supply room at the Employer's central station.

Roberts testified that Davidson can assign work to employees to assist in putting stock away and taking inventory and that he currently directs the work of Tom Bidwell, who previously managed supplies as a volunteer.⁶⁰ Davidson stated that he is unaware of any authority he has over Bidwell, who volunteered to help with supplies. When stock is delivered, either Davidson or Bidwell is responsible for putting the stock away.⁶¹

⁵⁸ The On Spot Reward Program is designed to reward volunteers with items such as movie tickets and t-shirts for performing special duties. The record is silent as to who has the authority to reward volunteers. Davidson was uncertain as to whether the program applied to paid individuals.

⁵⁹ Davidson rarely stocks an ambulance in his capacity as supply team coordinator. He normally restocks ambulances as part of his paramedic duties.

⁶⁰ Bidwell is a full-time EMT basic paramedic.

⁶¹ Davidson and Bidwell normally work opposite of each other so that when one is on duty, the other is off.

Roberts testified that Davidson can direct employees and can schedule hours by recommending to Roberts that work needs to be performed outside of duty hours, although he has never done so. Davidson testified that he has never assigned overtime or scheduled work hours of other employees with respect to supply coordination. If individuals are misusing equipment, stealing equipment, or doing anything that damages equipment or supplies, Davidson has the responsibility to notify Roberts of such, although he has never done so. Davidson consults with Roberts about medical supply ordering and recently the Employer purchased stair chairs for all vehicles at Davidson's suggestion.⁶² Davidson suggested a shrink wrap system in order to assist the Employer in complying with the New York State Department of Health requirements for the stocking of ambulances.⁶³ Davidson has never directed other individuals to shrink wrap supplies or to put those supplies on the ambulances.

Davidson testified that he has never solved or reviewed crew problems and that problems of this nature are handled by Roberts or Hussar.⁶⁴ Employees have reported stocking deficiencies directly to Roberts. Employees fill out recheck sheets and place them in a lock box.⁶⁵ Davidson has no access to the lock box and does not review these sheets. Davidson has never recommended discipline of any employee, and is unaware that he has any authority to recommend discipline. Robert testified that Davidson has counseled employees on numerous occasions.⁶⁶ According to Davidson, he has "counseled" employees as a paramedic on occasions when he has come on duty to find an ambulance dirty or less than fully stocked, but that he has

⁶² A stair chair is a piece of equipment that is used to take people down a flight of stairs.

⁶³ The ambulances are stocked with extra supplies which are used by EMS providers. The shrink wrapped supplies are stored in the ambulances as extras to ensure that there are always adequate supplies on each ambulance.

⁶⁴ According to Davidson, he is typically advised via e-mail if a trend is identified with respect to a certain crew's failure to restock their ambulance, although he has no involvement in discussions with the crew.

⁶⁵ It appears that recheck sheets are used to ensure that each ambulance is fully stocked at the beginning of a shift.

⁶⁶ The record is silent as to what is meant by counseling, and there are no specific examples of occasions when Davidson has counseled employees.

never counseled individuals as a supply team coordinator. There is no evidence in the record establishing that such “counseling” led to any further employee discipline.

Davidson devised policies with respect to restocking ambulances based on New York State Article 30, part 800, which dictates the minimum basic life support (BLS) supplies. ALS supplies are dictated by the Regional Medical Council.⁶⁷ Individuals are directed to contact either Davidson, Roberts or Hussar if supplies are missing, damaged or broken. Davidson has never attended supervisory meetings, has never had to report in off duty to perform duties associated with supplies, and is not, to his knowledge, required to do so.

ANALYSIS

The three issues presented are whether the Petitioner is a labor organization within the meaning of Section 2(5) of the Act; whether Mohr, Van Hart, Jacobs, Cutting and Davidson are supervisory employees under Section 2(11) of the Act; and whether part-time and per diem EMT critical care employees, EMT basic employees and EMT paramedic employees should be included in the bargaining unit with full-time EMT critical care, EMT basic employees and EMT paramedic employees.

Based on the record herein and extant Board law, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. I further find that none of the named individuals are supervisors under Section 2(11) of the Act and accordingly, they should be included in the unit found appropriate herein. Finally, I find that part-time EMT critical care employees, EMT basic care employees and EMT paramedic employees should be included in the bargaining unit, and per diem EMT critical care employees, EMT basic care employees and

⁶⁷ The Regional Medical Council is a group of physicians in the area that establish protocols regarding what supplies will be carried for ALS.

EMT paramedic employees who worked an average of four or more hours per week during the thirteen weeks preceding the filing of the petition should be included in the bargaining unit.

Labor organization status

It is undisputed that the Petitioner is an international association that admits to membership employees and exists in whole or part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work. Accordingly, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The Employer argues that the Petitioner is not a labor organization for purposes of the instant proceeding because, if certified, the bargaining unit employees will be formed into their own local with their own executive board and their own local number designation. According to the Employer, a “unique” issue exists as to whether a labor organization exists in the instant proceeding where employees will eventually be represented by a local that has not yet been formed.

Contrary to the Employer’s assertions in its post-hearing brief, the issue of whether an international union can petition for a unit of employees where it intends to form a local at some point after the certification is not unique at all. In fact, it is well settled that a national or international labor organization can file a petition on behalf of a local that it intends to form after certification. “[I]t is proper for one labor organization to file a petition on behalf of an after-formed organization.” United Truck & Bus Service Co., 257 NLRB 343, fn. 3 (1981), citing Sherold Crystals, Inc., 104 NLRB 1072 (1953). See also Trade Winds Co., Inc., 115 NLRB 860 (1956).

Accordingly, I find that the Petitioner is a labor organization for purposes of the instant

petition within the meaning of Section 2(5) of the Act.

Supervisory status of Mohr, Van Hart, Jacobs, Cutting and Davidson

Section 2(11) of the Act defines a statutory supervisor as any individual with the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. An individual will not be considered a supervisor in the absence of significant exercise of independent judgment. Lampi L.L.C., 322 NLRB 502 (1996); Jordan Marsh Stores Corp., 317 NLRB 460 (1995). The Board is careful not to give too broad an interpretation to the term “independent judgment” because the designation of supervisory status upon employees serves to exclude them from the protection of the Act. Tree-Free Fiber Co., 328 NLRB 389 (1999).

The party that asserts an individual has supervisory authority has the burden of proof. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). It is not necessary that the individual possess all of the specified powers; rather, possession of any one is sufficient to confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985). Individuals who exercises some "supervisory authority" but whose authority is exercised in a routine, clerical, or perfunctory manner will not be found to be supervisors. Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).

I find that the Employer has failed to meet its burden of showing that any of the disputed individuals is a supervisor within the definition of Section 2(11) of the Act. The record fails to

establish that the individuals possess any of the indicia of supervisory authority and none of the duties identified by the Employer as supervisory, requires the use of independent judgment.⁶⁸

Initially, I note that the Employer places great emphasis on the job descriptions of the five individuals and items contained in the employee manual. I find this evidence to be of minimal value. “[T]he Board law is clear that mere use of a title or the giving of paper authority which is not exercised does not make an employee a supervisor.” Sunset Nursing Home, Inc., 224 NLRB 1271, 1272 (1976). See also New Fern Restorium Co., 175 NLRB 871 (1969)(supervisory status under the Act is determined by an individual’s duties, not his job title or job classification). Furthermore, while it appears that the Employer forwarded a job description in some form to the individuals, none of the individuals signed for the job description, none could recall whether they had received the same job description placed into the record by the Employer, and the record indicates a genuine dispute as to whether the compensation manual in evidence is the same manual last provided to employees. Accordingly, I accord little weight to these items of evidence and instead rely on the actual duties and responsibilities of these individuals as set forth by the testimony of the parties.

The record demonstrates that all of the disputed individuals perform EMT duties 90 percent to 100 percent of the time, in contrast to Roberts, who infrequently takes a call, and Hussar, who spends approximately 90 percent of his time engaged in duties pertaining to his position as director of administrative services. Even assuming, arguendo, that any of the disputed individuals are statutory supervisors while performing their additional duties, and I find

⁶⁸ The record contains a great deal of contradictory testimony regarding the duties of the disputed individuals. I find, based on extant Board law, that these discrepancies militate against a finding of supervisory status. “Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

that they are not, I note that they do not spend a regular and substantial portion of their day engaged in these duties. In Hexacomb Corp., 313 NLRB 983 (1994), the Board declined to find EDF foremen statutory supervisors even where they exercised supervisory authority eight to ten percent of their time when filling in for assistant supervisors, noting that their “assumption of supervisory duties is irregular and sporadic . . . and therefore is insufficient to establish supervisory authority.” Id. at 984, citing Latas De Aluminio Reynolds, 276 NLRB 1313 (1985); and Canonsburg General Hospital Association, 244 NLRB 899 (1979). I find this minimal time spent performing additional duties insufficient to warrant removing these individuals from the proposed bargaining unit in light of the fact that they spend all or virtually all of their work time engaged in the identical work duties with the identical responsibilities as the EMTs that the parties agree should be included in the unit.

According to the Employer, the disputed individuals possess nearly all of the supervisory indicia set forth in Section 2(11) of the Act. Yet, the record fails to disclose any evidence that any of these individuals have ever hired, transferred, suspended, recalled, promoted, discharged, or disciplined employees, or effectively recommended such action, or that they have the authority to do so.

Roberts testified that all of the individuals direct the work of other employees. With respect to Mohr, the Employer claims that he directs the work of Hutchinson. I note that Hutchinson is a volunteer and the record contains no evidence as to how Mohr directs his work, or the work of any other individual. Likewise, the record is devoid of any evidence that Van Hart or Cutting direct the work of any individuals.

Regarding the Employer’s claim that Jacobs directs the work of individuals on the QA/QI committee by assigning them PCRs, the record demonstrates that Jacobs has no discretion in

selecting which PCRs are reviewed by the committee, or which committee members review a particular PCR. The record fails to disclose any evidence that Jacobs exercises independent judgment in assigning PCRs for review. All PCRs involving narcotics are automatically assigned to Kapcho and Jacobs distributes the remaining PCRs by their order on her list. Accordingly, I find that Jacobs' exercises no independent judgment in the distribution of PCRs to the committee members and, accordingly, this task does not confer supervisory status upon her. See Shen Automotive Dealership Group, 321 NLRB 586 (1996)(routine assignment of work in the absence of independent judgment, responsible direction of employees, or ability to independently authorize time off does not establish Section 2(11) supervisory status). See also Inland Steel Company, 308 NLRB 868 (1991)(no supervisory status conferred on technicians where they spent the majority of their time performing job duties as opposed to directing or assigning work and no independent judgment exercised where assignment of work was routine and based solely on employee availability).

Regarding Davidson, the record contains no evidence that he directs the work of Bidwell or any other individual, or that Davidson exercises any supervisory authority over him. Rather, it appears that Bidwell volunteered to assist with stock room responsibilities because he previously performed this duty, and that Bidwell puts stock away when Davidson is not present. To the extent that Davidson rewarded a t-shirt to a volunteer on one occasion, I note that the record is silent as to which individuals have the authority to make awards pursuant to the SPOT program, and whether rewards were available to paid employees, or only to volunteers. Moreover, such reward is of only token value. The record is similarly devoid of evidence that either Cutting or Van Hart direct the work of any employees or volunteers.

The Employer claims that all of the disputed individuals can recommend discipline for employees based on their noncompliance with the Employer's policies. However, I find that the record demonstrates, at best, that these individuals merely report noncompliance with the Employer's policies to the Employer. It is well settled that the mere reporting of employee violations to management without any effective recommendation of disciplinary action is insufficient to establish supervisory status. See Passavant Health Center, 284 NLRB 887, 888-891 (1987). See also Haven Living Center, Inc., d/b/a Rest Haven Nursing Home, 322 NLRB 210, 211 (1996) ("employees are not supervisors where they merely report incidents of unacceptable work performance or behavior and make no recommendations with respect to discipline.") To the extent that Roberts testified that he relies on the recommendations of these individuals, I note all of the individuals at issue testified that they have never recommended discipline regarding another employee.⁶⁹

In Third Coast Emergency Physicians, P.A., 330 NLRB 756 (2000), the Board considered whether emergency physicians and senior advisory council members (also physicians) were supervisors under Section 2(11) of the Act. The record demonstrated that the emergency physicians gave medical orders to all hospital staff and reviewed charts to ensure that documentation met Federal guidelines, but had no authority to hire, fire, transfer, suspend, layoff, recall, assign, reward or discipline employees. Emergency physicians provided feedback to the medical director (who had disciplinary authority) regarding compliance with hospital protocols, standing orders, Federal requirements, and patient charts that could result in discipline.

⁶⁹ I further note that Roberts suspended LaMont notwithstanding Jacob's input that it was her opinion that he did nothing wrong during the emergency call in question, belying any suggestion that Roberts relies on Jacobs' recommendations in determining discipline.

Senior advisory council members filled out recommendations regarding new physician hires, voted on whether particular physicians should be hired, and in two instances recommended that a physician be removed from employment.

The Board found that none of the physicians were supervisors under the Act.

[T]he evidence is insufficient to establish that the recommendations of the physicians are effective or that the physicians formulate and effectuate management policy. Thus, for example, there is no evidence that any recommendation by staff physicians was effective in determining particular disciplinary action. The evidence failed to show what role, if any, was played by any vote by the senior advisory council regarding hiring. There was no evidence regarding the details of removals or the role of recommendations by the senior advisory council regarding terminations. . . . With regard to formulating and effectuating policy, the evidence fails to show that the senior advisory council takes direct action or instructs others to do so and/or the extent to which their recommendations are followed.

Id. at 756.

Similarly, in the instant case, the record contains no evidence that any of the disputed individuals takes direct action against employees, or instruct others to do so, or that any of the disputed individuals has recommended action against employees. See Harbor City Volunteer Ambulance Squad, Inc., 318 NLRB 764 (1995)(no Section 2(11) status in the absence of evidence that putative supervisors had ability to make recommendations that impacted on job status).

The Board has declined to find statutory supervisors employees with far more responsibilities than the disputed individuals in the instant proceeding. In Rhode Island Hospital, 313 NLRB 343 (1993); the Board found that a lead stock clerk was not a statutory supervisor even where she gave directions to the stock clerk in the handling of this material, processed payments and approved invoices. The lead stock clerk also completed annual written

performance appraisals of the stock clerk, which were tied to the annual merit wage increases, had authority to give verbal warnings to the stock clerk, scheduled the stock clerk's hours, authorized overtime and permitted the stock clerk to leave early. The Board stated:

We find, based on the record evidence, that the lead clerk's direction of work is merely routine; the clerk's scheduling employee hours, allowing an employee to leave early and scheduling or authorizing overtime is not shown to require independent judgment--in fact, overtime is limited to taking inventory; and there is no evidence that verbal warnings had any subsequent impact on the employees.

Id. at 348.

Unlike the stock clerk in Rhode Island Hospital, none of the disputed individuals herein evaluates employees, makes recommendations for pay increases, or has the authority to discipline employees, sign invoices, schedule employees' hours, authorize overtime or permit employees to leave work early. There is no evidence in the record that any of the disputed individuals participates in the hiring process. Van Hart was involved in hiring in his former position as director of operations, but never in his role as fleet manager. Despite Roberts' testimony that all of the individuals have the authority to adjust grievances, the record fails to disclose examples of any of the disputed individuals adjusting employee grievances. "[C]onclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority." Sears, Roebuck & Co., 304 NLRB 193 (1991), citing American Radiator Corp., 119 NLRB 1715, 1718 (1958).

The Employer argues that the disputed individuals possess secondary indicia of supervisory status; specifically that the alleged supervisors attend management meetings. The record supports a finding that the purpose of these meetings is to allow the employees to report to management regarding the status of their individual areas of responsibility. There is no

evidence in the record that demonstrates that these individuals attended general management meetings or are in any way part of the management structure. Even assuming that the meetings attended by these individuals are management meetings, the presence of secondary indicia of supervisory status is insufficient to confer Section 2(11) status in the absence of any of the primary indicia enumerated in the Act. First Western Building Services, Inc., 309 NLRB 591, 602 (1992).

To the extent that the Employer argues that all of these individuals develop and implement policies relating to their area of responsibility, the development and implementation of policies is not an indicium of Section 2(11) supervisory status but rather goes to the question of whether the individual is a managerial employee. NLRB v. Yeshiva University, 444 U.S. 672 (1980). The Employer has not claimed either in the record or its brief that any of the disputed individuals are managerial employees. In any event, I find that the record demonstrates that all managerial policies are approved and implemented by Roberts and that none of the disputed individuals has the authority to independently formulate and effectuate the Employer's policies.

Thus, I find that the Employer has not met its burden of demonstrating that any of the disputed individuals is a supervisor pursuant to Section 2(11) of the Act. According, I find that Mohr, Van Hart, Jacobs, Cutting and Davidson are not statutory supervisors and I shall include them in the bargaining unit herein.

Part-time and per diem employees

The Employer argues in its post-hearing brief that part-time and per diem paramedics do not share a sufficient community of interest with full-time paramedics as to warrant their inclusion in the bargaining unit because they work less hours, receive fewer benefits, and hold

outside employment.⁷⁰

The Act only requires the petitioned-for unit to be an appropriate unit; it does not require the unit be the only appropriate or even the most appropriate unit. The Boeing Co., 337 NLRB 152 (2001); Overnite Transportation Company, 322 NLRB 723 (1996). The Board's procedure for determining an appropriate unit under the Act is to first evaluate the petitioned-for unit. If the unit is found appropriate, thereby ensuring employees the fullest freedom in exercising their rights under the Act to select a representative of their own choosing, then the inquiry into the appropriateness of the unit ends.

A unit is appropriate when the employees in the petitioned-for unit share a community of interest. NLRB v. Action Automotive, Inc. 469 U.S. 490, 494 (1985). In Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962), the Board enumerated factors to be assessed in determining whether a community of interest sets a group of employees apart from other employees:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

I find that the part-time and per diem paramedics share a sufficient community of interest with full-time paramedics as to warrant their inclusion the bargaining unit. The record demonstrates that all paid employees must be EMTs at the basic, intermediate, critical care or paramedic levels. All EMTs receive the same training and all must pass practical and didactic examinations to receive their certification from the New York State Department of Health. All

⁷⁰ The Employer cites no authority establishing that the Board considers outside employment in performing a community of interest analysis.

EMTs have access to any CME trainings provided by the Employer, and all EMTs can participate in the Employer's retirement plan. All non-volunteer EMTs are paid hourly.⁷¹ All receive free uniforms and a boot allowance.

There is no dispute that all full-time, part-time and per diem EMTs have common supervision, perform the same job duties, have the same responsibilities when on duty, and work side by side. All EMTs can act as crew chiefs and are subject to a six-month probationary period. All paid employees receive a password allowing them access to the Employer's website, and all paid employees are governed by the employment policies set forth in the Employer's compensation manual. All employees can participate in the Employer's 403(b) plan if they worked a minimum of 1000 hours during the preceding year.⁷²

I find that full-time and part-time EMT employees share a strong community of interest with full-time EMTs based on their identical skill levels and educational and training requirements, the fact that they work side by side, perform identical job duties, and share common supervision. These factors strongly outweigh any argument made by the Employer that the part-time and per diem EMTs share no community of interest with full-time EMTs simply because that they work fewer hours and receive fewer benefits.

Regarding per diem employees, I find that the Petitioner's request to include in the unit per diem employees who worked an average of four hours or more per pay period during the quarter preceding the eligibility date conforms with extant Board law.⁷³

The Board's longstanding and most widely used formula for voting eligibility for part-time or on-call employees is the Davison-Paxon

⁷¹ No evidence was presented regarding any differences in the hourly wage rates of part-time and per diem employees compared to full-time EMTs.

⁷² No part-time or per diem employees participate in the 403(b) plan because none have met the minimum hourly requirement.

⁷³ The Employer does not contend that part-time employees must meet any eligibility requirement, nor does the Employer contend that the four-hour average is inappropriate or inapplicable herein.

formula, under which an employee is deemed to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages 4 or more hours of work per week for the last quarter prior to the eligibility date.

Steppenwolf Theater Co., 342 NLRB No.7, slip op at 3 (June 11, 2004).

Inasmuch as part-time and per diem employees share common working conditions and supervision with full-time employees, I find that part-time and per diem EMT critical care employees, EMT basic employees and EMT paramedic employees who worked an average of four hours per week during the quarter preceding the eligibility date shall be included in the unit

CONCLUSION

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, and regular part-time and per diem EMT critical care employees, EMT basic employees and EMT paramedic employees, OSHA coordinator, fleet manager, QA/QI coordinator, driver training coordinator, and supply team coordinator; excluding the Executive Director, Director of Administrative Services, ALS Supervisor, office clerical employees, guards, professional employees, and supervisors as defined in the Act, and all other employees.

There are approximately 29 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they

were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Association of EMTs and Paramedics, SEIU/NAGE, AFL-CIO.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by CART with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New

York 14202 on or before December 28, 2004. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by January 4, 2005.

DATED at Buffalo, New York this 22nd day of December, 2004.

RHONDA P. ALIOUAT, Acting Regional Director
National Labor Relations Board – Region Three
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111 West Huron Street - Room 901
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